what is not "invested capital," see *Cartier* v. *Doyle,* 269 Fed. 647, holding that money put up by one of a partnership as security for loans to the partnership was invested capital for the excess profits tax; and *Tire Co.* v. *Iredell,* 268 Fed. 377, holding that patents, rented out to third parties on certain royalties, were not invested capital. It is difficult to see any possible argument against the constitutionality of the Act. The court held it not to be unreasonable of Congress to adopt the cost basis, thus resting values on experience rather than on vague anticipation of market values. It was argued that the tax would operate so unequally as to deny due process, and two cases under the Fourteenth Amendment were cited; *Southern Ry. Co.* v. *Greene,* 216 U. S. 400, and *Gast Realty Co.* v. *Schneider Granite Co.,* 240 U. S. 55. The latter involved a paving tax based on frontage and area, the tax being held invalid because of gross inequality. It was pointed out that the Fifth Amendment has no equality clause, although it would seem that even under the Fifth Amendment, inequality, if sufficiently gross, would of itself show lack of due process. The paving tax case would be more analogous if the tax in the principal case were on capital, instead of on income. On the contrary, it is submitted that the tax burdens are borne less unequally with the cost basis, than if any valuation basis had been used. The principal case is valuable incidentally in helping to clear the legal-economic concept of value. Capital assets, converted into cash, were decided to be income for the income tax; *Merchants Loan and Trust Co.* v. *Smietanka,* (1921), 41 Sup. Ct. Rep. 386; 19 MICH. L. REV. 854. Unconverted capital assets, in the form of property, are neither capital nor income, but simply an unrealised, unearned increment.

CONSTITUTIONAL LAW—JUDICIAL REVIEW OF ORDER OF A COMMISSION—A water company in Pennsylvania appealed from an order of a commission, claiming the rate fixed by it to be confiscatory. A state statute authorized the reviewing court to ascertain whether such an order of a commission was "reasonable and in conformity with law." Under this statute the court reversed the order saying there had been an erroneous valuation of the company's property. On appeal to the state supreme court the latter held the reviewing court to be outside its jurisdiction in exercising its judgment as to the valuation of the property since there was competent evidence to support the finding of the commission. The United States Supreme Court *held,* that, under the construction given it by the state supreme court, the statute was unconstitutional in that it did not give the reviewing court the power to exercise its own judgment as to the facts and therefore denied due process. Brandeis, Holmes and Clark, JJ., dissenting. *Ohio Valley Water Company* v. *Ben Avon Borough, et al,* (June 1920), 253 U. S. 287, 64 L. Ed. 908.

Rate making, historically and in its very nature, is a legislative function delegated to commissions for reasons of expediency. It is well settled, however, that the order of such a commission must be reviewable in a court at the suit of an interested party who deems it unjust, otherwise due process is denied. *Prentis* v. *Atlantic Coast Line Co.,* 211 U. S. 210. But as to the extent of this review the principal case presents a difference of opinion. The dissenting opinion states that a review of questions of law, including whether

the finding is reasonably supported by the evidence is enough. *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541; *People* v. *McCall*, 245 U. S. 345, (*semble*). But the majority hold that the reviewing court must have an opportunity to determine the issue "upon its own independent judgment as to both law and facts." It will be noticed that this gives the court a broader scope than it has in reviewing the act of a judicial body, its power there extending only to the limits outlined in the dissenting opinion of this case. 2 ENCYC. PL. AND PR. 390. The cases cited in support of the decision, while clearly recognizing the right of judicial review to the extent allowed in the dissenting opinion, do not seem to go farther and hold that it extends to a review of the findings of fact themselves. It would seem that an experienced rate making commission would be more peculiarly fitted than a reviewing court for ascertaining the value of property. Such ascertainment is a matter of opinion based upon a study of the facts. If the opinion of the commission has been reached after a hearing which has allowed the interested party ample opportunity to present the facts, he should have no right to have a reviewing court again pass on the weight of these facts. It would seem that the holding of the principal case extends the scope of judicial review to include that which is not necessary for the protection of the individual under the due process clause, and it is submitted that practical difficulties will be found in the application of the doctrine.

CONTRACTS—ACCEPTANCE TO TAKE EFFECT IN THE FUTURE—P placed an order for goods through D's traveling salesman. On receipt of the order D wrote, on October 1st, saying that same would receive prompt attention; that since it was a first order P's credit would have to be investigated; but that just as soon as this investigation was completed he would be advised in regard to the acceptance of his order. On October 25th (certain prices having risen in the meantime) D wrote a second letter in which he stated that P's order had been entered for part of the goods only and that the other kinds had been withdrawn from the market pending the credit investigation. In an action for breach of contract for not delivering all the goods ordered it was *held*, that D was liable. *Gilmer Bros. Inc.* v. *Wilder Merc. Co.* (Ala. 1921). 88 So. 854.

It is not clear from the opinion of the court whether it regards the contract as having been completed at the moment when the letter of October 1st was posted, or at the moment when the credit investigation was finished. If it intended to decide the former the holding would clearly be erroneous, for then we should have a pretended acceptance seeking to bind the offeror subject to a condition not specified in his offer. Nothing is better settled in the law of contracts than that an act to be effectual to complete a contract must amount to an unqualified assent to the terms proposed in the offer. If it does not, it not only does not create a contract but in addition amounts to a rejection of the offer. *Hyde* v. *Wrench*, 3 Beav. 344; *Minneapolis etc. Ry. Co.* v. *Columbus Rolling Mill Co.*, 119 U. S. 149. See also the numerous cases cited in 13 C. J. 281. sec. 86. However, where the offeree accepts the terms of the offer unqualifiedly, at the same time stating in effect that he intends his